

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

EFRAIN CRUZ, JR.	:	
	:	
v.	:	PRISONER
	:	CASE NO. 3:04CV1103(CFD)
	:	
SUPERIOR COURT JUDGES, et al.	:	

RULING AND ORDER

Plaintiff, Efrain Cruz, Jr., (“Cruz”), is confined at the Osborn Correctional Institution in Somers, Connecticut. He brings this civil rights action pursuant to 28 U.S.C. § 1915. On March 22, 2005, the court dismissed the amended complaint and afforded Cruz twenty days to file an amended complaint if he could correct the deficiencies in his claims against defendants Wagner, Sendio, Spell, Pulaski and Public Defender Office. Cruz has filed a motion to reopen accompanied by a proposed second amended complaint and motion to proceed in forma pauperis. For the reasons that follow, both motions are denied.

I. Motion to Proceed In Forma Pauperis [doc. #13]

Cruz was granted leave to proceed in forma pauperis in this action on September 20, 2004. If the court were to reopen this case, Cruz’s in forma pauperis status would continue. Thus, the second motion is denied as moot.

II. Motion to Reopen [doc. #14]

In the March 22, 2005 ruling, the court afforded Cruz twenty days, or until April 12, 2005, to file a motion to reopen and proposed second amended complaint. In cases filed by inmates, the court considers a motion to have been filed as of the date the inmate gives the

motion to prison officials to be mailed to the court. See Dory v. Ryan, 999 F.2d 679, 682 (2d Cir. 1993) (holding that a pro se prisoner complaint is deemed filed as of the date the prisoner gives the complaint to prison officials to be forwarded to the court)(citing Houston v. Lack, 487 U.S. 266, 270 (1988)). Cruz's motion to reopen is dated March 28, 2005 and April 19, 2005. Thus, the motion could not have been given to prison officials for mailing sooner than April 19, twenty-eight days after the court issued its ruling. Accordingly, the motion to reopen is not timely filed.

Further, even if the motion were timely, the proposed second amended complaint does not comply with the court's directions. The court permitted Cruz to amend with regard to the claims against defendants Wagner, Sendio, Spell, Pulaski and Public Defender Office. He names in the proposed second amended complaint Attorney Lieol, William J. Sencio and John Doe of the Court Reporter. Attorney Lieol and John Doe Court Reporter were not included in the original or first amended complaints. Thus, Cruz was not afforded permission to amend his complaint against them.

William J. Sencio is the Police Chief named in the amended complaint as Sendio. The only claim asserted against him in the proposed second amended complaint is a violation of the Freedom of Information Act. The federal Freedom of Information Act, 5 U.S.C. § 552, applies to federal agencies. See 5 U.S.C. § 551. Defendant Sencio is the Chief of the New Britain Police Department. A municipal police department is not a federal agency. Thus, there is no factual basis for a claim against defendant Sencio for violation of the federal Freedom of Information Act.

III. Conclusion

Cruz's motion to proceed in forma pauperis [**doc. #13**] is **DENIED** as moot. His motion to reopen [**doc. #14**] is **DENIED** as the proposed second amended complaint does not comply with the court's March 22, 2005 ruling in that Cruz seeks to add new defendants to the case and the only claim that purports to comply with the ruling is frivolous within the meaning of 28 U.S.C. § 1915(e)(2)(B)(i).

**SO ORDERED** this 1<sup>st</sup> day of March 2006, at Hartford, Connecticut.

/s/ CFD  
CHRISTOPHER F. DRONEY  
UNITED STATES DISTRICT JUDGE